SUPREME COURT

No. 75-180

FILED
OCT 2 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

INTERSTATE 95 COMMITTEE, *Petitioner*

v.

WILLIAM T. COLEMAN, JR., Secretary of Transportation, *et al.*, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITIONER'S REPLY MEMORANDUM

J. O. TALLY, JR.
TALLY & TALLY
MORRIS CHEETKOV
DWIGHT W. ALLEN
Post Office Drawer 1660
Fayetteville, North Carolina 28302
and
Suite 307
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-180

INTERSTATE 95 COMMITTEE, *Petitioner*

v.

WILLIAM T. COLEMAN, JR., Secretary of Transportation, *et al., Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITIONER'S REPLY MEMORANDUM

Petitioner Interstate 95 Committee replies as follows to the federal respondents' brief in opposition to certiorari:

1. On pages 6-7 of their brief in opposition, the federal respondents assert that our first certiorari question is moot by reason of the enactment of Pub. L. 94-83 which is retroactive all the way back to the Janu-

ary 1, 1970 effective date of NEPA.[1] They therefore urge that certiorari on this question be denied here. They also note in this connection that on the *identical* question which they themselves raised in the pending petition for certiorari in No. 74-1413, they have requested this Court to reverse the Second Circuit *or, alternatively, to remand the case for reconsideration.*

The alternative relief requested by the respondents in No. 74-1413 moves us to urge serious caution in the disposition of an identical question in the two pending petitions if inconsistency with Congressional intent is to be avoided. The plain fact of the matter is that upon the record both cases are indistinguishable as to the quality and quantity of federal involvement in the preparation of the environmental statements. They are representative of the great mass of highway project cases in which the Department of Transportation with its admittedly limited qualified personnel and resources largely left the all-important show of compliance with NEPA to state highway commissions.[2] That the Congress frowned upon, and had no intention to legitimatize such conduct in Pub. L. 94-83, is further

---

[1] While our petition was filed *prior* to the enactment of Pub. L. 94-83, we noted on p. 8 thereof that legislation that might affect this question was pending in the Congress and that we would further advise this Court as appropriate.

[2] "Available evidence, including testimony by the prior Secretary of Transportation, John Volpe, indicates that state highway commissions do not affirmatively seek a neutral and unbiased judgment of the environmental aspects of a proposed project. These bodies tend to view environmental impact statements as mere procedural paperwork which will justify prior decisions made on the basis of traditional engineering and cost-analysis concepts." 58 Iowa L. Rev. 1268, 1270 (1973).

clearly revealed in the legislative history of that Act (see particularly pp. 10-11 of Report No. 94-152, Comm. on Interior and Insular Affairs, 94th Cong., 2d Sess.). In view of the dismal history of federal participation in NEPA statements in highway project cases (many of which are still languishing in the lower courts), and for the sake of giving proper scope to this new legislation and the promotion of uniformity in its application, we urge the Court to grant certiorari in both our case and in No. 74-1413 and to consolidate them for argument.

2. The respondents do not suggest that Pub. L. 94-83 applies to the second question in our petition for certiorari, and, of course, it does not apply.

On page 8 of their brief, the respondents seem to suggest that it is of critical importance that "it appears likely" that the submission of the alternative proposal was made a little after the State Highway Department submitted the environmental impact statement for federal approval. First of all, we submit that what is of critical importance is not that; but rather the fact, as we have shown on pages 13-14 of our Petition, that there was ample time for the state to inform the federal authorities *before the approval* of either the environmental statement or the entire project. Secondly, it must have slipped the respondents' attention that our offer of proof in the district court that the alternative proposal was submitted even *before the public hearing* was disallowed (Pet. p. 13; Pet. App. C, p. 20a, note 4).

In note 8 of their brief, the respondents answer our claim of conflict in the Circuits with nothing more than the pious and general assertion that "the application of such a standard must necessarily vary with the

factual setting." We assure the Court that it was with due respect to this principle that we cited the cases on pages 14-15 of our Petition, particularly *I-291 Why? Association* v. *Burns.*

CONCLUSION

We believe that certiorari should be granted as to both questions raised in our Petition. In the alternative, we request certiorari on the second question concerning the state's failure to report its consideration of the intermediate route.

Respectfully submitted,

J. O. TALLY, JR.
TALLY & TALLY
MORRIS CHERTKOV
DWIGHT W. ALLEN
Post Office Drawer 1660
Fayetteville, North Carolina 28302
and
Suite 307
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Petitioner